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**MAR 03 2008**

In re Application of :  
Hiroteru Tsuchiya :  
Application No. 10/077,891 : **DECISION ON PETITION**  
Filed: February 20, 2002 :  
Attorney Docket No. 016907-1374 :

This is a decision on the petition, filed April 19, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely reply to the Notice of Allowability mailed November 17, 2006, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on March 19, 2007 noting applicant's failure to file corrected drawings in response to the Notice of Allowability. The issue fee had been timely filed.

Petitioner asserts that no corrected drawings were required and that the Notice of Allowability was in error. Petitioner states that applicant had a telephone conversation with the examiner of record, Stephen Brinich and that the examiner confirmed the fact that corrected drawings were not required. The examiner faxed (informally) applicant an apparent corrected Notice of Allowability on December 6, 2006 indicating no corrected drawings were needed. This Notice was unsigned and indicated no response time.

Petitioner's arguments have been considered, but are not persuasive. Petitioner asserts that applicant was officially communicated by the Patent Office by faxed Notice of Allowability on December 6, 2006. However, the official written record does not support this. There is no evidence of record that shows a second Notice of Allowability or even an interview summary

was officially mailed to petitioner. The faxed Notice of Allowance does not appear in the written record nor is there any official counting or mailing transaction of this notice. As noted above, it is unsigned and no response time is indicated. This Notice is nothing more than an unofficial correspondence sent from the examiner to applicant and is not part of the official record. Further, there is no official correspondence from applicant prior to this petition that the original Notice of Allowability was in error. Petitioner's response to the Notice of Allowance, to be complete should have included a formal request for a corrected Notice of Allowance.

In summary, to the extent that petitioner's counsel believed that the examiner had agreed that no further action was needed to avoid abandonment of the application, there is no showing in the written record to support that allegation. As MPEP 711.03(c) states, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicants' reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicants of any deficiency in sufficient time to permit the applicant to take corrective action, see *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

As such, the showing of record is that the abandonment resulted from the failure of petitioner to file a timely proper response to the Notice of Allowability rather than an error on the part of the USPTO.

The application is properly abandoned.

The petition is **DISMISSED**.

Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

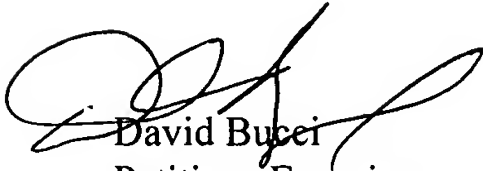
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Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.



David Bucci  
Petitions Examiner  
Office of Petitions